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FILED

Date 10/11/10 By Kelli Okuma

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ZAPPEN EXTERMINATING** **JOSEPH W. ZAPPEN, Owner and QM** 511 South 1st Avenue #476 Arcadia, California 91006 **Company Registration License No. PR 3982, Br. 3** **Operator License No. OPR 10234, Br. 3** Respondent.	Case No. 2011-12 **ACCUSATION**

Kelli Okuma ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

Company Registration Certificate No. PR 3982

2. On or about June 26, 2001, the Board issued Company Registration Certificate Number PR 3982 ("registration") to Zappen Exterminating in Branch 3, with Joseph W. Zappen ("Respondent") as the owner and Qualifying Manager. On or about October 13, 2009, the registration was suspended pursuant to Business and Professions Code ("Code") section 8697 (failure to maintain a surety bond). On or about October 19, 2009, the registration was reinstated.

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Operator's License No. OPR 10234

3. On or about June 8, 2000, the Board issued Operator's License Number OPR 10234 ("license") in Branch 3 to Respondent. On or about June 26, 2001, Respondent became the owner and Qualifying Manager of Zappen Exterminating. The license will expire on June 30, 2011, unless renewed.

JURISDICTION

4. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

5. Code section 8624 states:

> If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
>
> If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.
>
> The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

6. Code section 8625 states:

> The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

7. Code section 8622 states:

> When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued

pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars ($125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

STATUTORY PROVISIONS

8. Code section 8516 states, in pertinent part:

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516.1, Section 8518, or this section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, filed notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours.

Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

(10) Recommendations for corrective measures.

9. Section 8518 of the Code states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

10. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

11. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

12. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

13. Code section 8642 states:

The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action.

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1990, states, in pertinent part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or organisms.

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

(d) Even though the licensee may consider the following areas inaccessible for purposes of inspection, the licensee must state specifically which of these areas or any other areas were not inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

(f) The following language shall appear just prior to the first finding/recommendation on each separated report:

"This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from infestation of infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section I or Section II."

15. California Code of Regulations, title 16, section 1991, states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:
(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or
(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or
(C) locally treat by any or all of the following:
1. exposing the infested area(s) for local treatment,
2. removing the infested wood,
3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")
When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible, except where a licensee is using an above ground termite bait station that requires the use of the termite tubes to be effective. Where a licensee is using an above ground termite bait station that requires the use of termite tubes to be effective, subterranean termite tubes can remain in place for the duration of the licensee's use of the termite bait stations. At the conclusion of the treatment, the subterranean termite tubes shall be removed.

(12) Repair a stall shower if it is found to leak when water tested for a minimum of fifteen (15) minutes after the shower drain has been plugged and the base filled to within one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2) inches to the top of the dam are to be water tested by running water on the unplugged shower base for a minimum of five (5) minutes./ showers over finished ceilings must be inspected but need to be water tested. If water stains are evidence on the ceiling, recommendations shall be made for further inspection and testing.

16. California Code of Regulations, title 16, section 1993, states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

17. California Code of Regulations, title 16, section 1937.14, states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

COST RECOVERY/RESTITUTION

18. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

19. Government Code section 11519(d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

LIEBER PROPERTY

20. On or about July 23, 2009, Respondent inspected the property located at 846 West Hillcrest Blvd., in Monrovia, California, ("Lieber property"), for wood destroying pests and organisms for escrow purposes, and on that same day issued Wood Destroying Pests and Organisms Inspection Report No. 5527 ("Inspection Report No. 5527"). Inspection Report No. 5527 consisted of five findings and recommendations.

21. On or about August 17, 2009, Respondent issued a Standard Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all of the work recommended in Inspection Report No. 5527, dated July 23, 2009, had been completed in accordance with the Board's rules and regulations, and that the property was now free of evidence of active infestation or infection in visibly accessible areas.

22. On or about August 29, 2009, escrow closed.

23. On or about October 2, 2009, Foss Termite Control, Inc. ("Foss") inspected the Lieber property for wood destroying pests and organisms. Foss prepared an inspection report consisting of four findings and recommendations.

24. On or about October 14, 2009, the Board received a complaint from the homeowner, Elaine Lieber, due to Foss's findings of evidence of termites and termite damage to the structure.

25. On or about October 26, 2009, the Board notified Respondent of the homeowner's complaint.

26. On or about November 10, 2009, Respondent notified the Board that he contacted and met with the homeowner and is addressing the problems.

27. On or about December 14, 2009, a Board specialist performed a limited inspection of the Lieber property and noted violations.

28. On or about December 30, 2009, the Board specialist prepared and issued a Report of Findings along with a Notice ordering Respondent to bring the property into compliance by correcting the items described in the Report of Findings and to submit a corrected inspection report and Notice of Work Completed and Not Completed to the Board within thirty (30) days with respect to the inspection performed on July 23, 2009.

29. On or about February 17, 2010, Respondent re-inspected the Lieber property and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 5527A ("Inspection Report No. 5527A"), consisting of 12 findings and 10 recommendations.

30. On or about February 19, 2010, Respondent issued a Completion Notice, certifying that all of the work recommended in Inspection Report No. 5527A, dated February 17, 2010, had been completed in accordance with the Board's rules and regulations.

31. On or about March 10, 2010, a Board specialist went to the Lieber property to check the Respondent's work for compliance, and found that Respondent was not in compliance.

32. On or about March 19, 2010, Respondent re-inspected the Lieber property and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 5527B ("Inspection Report No. 5527B"), consisting of 13 findings and 10 recommendations.

33. Respondent failed to bring the Lieber property into compliance.

FIRST CAUSE FOR DISCIPLINE

(Inspection Report Violations)

34. Respondent's registration and operator's license are subject to discipline under Code section 8641, concerning the Lieber property, in that on Inspection Report No. 5527, dated July 23, 2009, Inspection Report No. 5527A, dated February 17, 2010, and Inspection Report No. 5527B, dated March 19, 2010, Respondent failed to include language defining Section I/Section II conditions on each report, as defined in California Code of Regulations, title 16, section 1990(f).

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SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

35. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that, concerning the Lieber property, Respondent failed to comply with the following Code sections:

Section 8516(b) and Section 8518:

a. Respondent failed to issue an inspection report and completion notice for the repair work completed at the wood deck in or about October 2009.

Section 8516(b)(6):

b. Respondent failed to include an accurate diagram of the incident address on the July 23, 2009, February 17, 2010, and March 19, 2010, inspection reports. The diagram on the July 23, 2009, inspection report failed to include the inaccessible portion of the substructure, the wood deck/patio staircase, the entryway to the house, and the fireplace. The diagram on the February 17, 2010, inspection report failed to include the inaccessible portion of the substructure, the side carriage porch, the wood deck/patio staircase, the entryway to the house, and the fireplace.

c. Respondent failed to include on the inspection report diagram, the correct location of the reported old evidence of subterranean termites and subterranean termite damage in the substructure, and the decay fungi and decay fungi damage at the side carriage porch on the March 19, 2010, inspection report.

Section 8516(b)(6) and (7):

d. Respondent failed to report cellulose debris in the substructure on the July 23, 2009, inspection report, and the full extent of the cellulose debris on the March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(3).

e. Respondent failed to report the full extent of the evidence of subterranean termites in the substructure on the July 23, 2009, February 17, 2010, and March 19, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(3).

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f. Respondent failed to report subterranean termite damage in the substructure on the July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(4).

g. Respondent failed to report evidence of an excessive moisture condition (water stains) in the substructure on the July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(5).

h. Respondent failed to report inaccessible portions of the substructure, due to an insulated sub-floor, on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(b)(2) and 1993(d).

i. Respondent failed to report decay fungi, decay fungi damage, and evidence of an excessive moisture condition (water stains) at the framing below the side carriage porch on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(3) and (4), and 1990(b)(5).

j. Respondent failed to report evidence of subterranean termites in the attic framing on the July 23, 2009, and March 19, 2010, inspection reports, and the full extent of the evidence of subterranean termites in the attic on the February 17, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(3).

k. Respondent failed to report the drywood termite damage at the wood deck framing on the July 23, 2009, inspection report, and the full extent of the drywood termite damage at the wood deck on the February 17, 2010, and March 19, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(4).

l. Respondent failed to report subterranean termite damage at the wood deck framing on the July 23, 2009, and March 19, 2010, inspection reports, and the full extent of the subterranean termite damage at the wood deck on the February 17, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(4).

m. Respondent failed to report earth-to-wood contact at the wood deck load posts on the July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(4) and 1993(d).

n. Respondent failed to report decay fungi damage at the framing of the nook below the wood deck on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(4).

o. Respondent failed to report evidence of an excessive moisture condition (water damage) and decay fungi damage at the storage area below the wood deck on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(4) and 1990(b)(5).

p. Respondent failed to report portions of the attic that are inaccessible due to construction on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(d).

q. Respondent failed to report water damage at the wood deck storage area on the March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(5).

r. Respondent failed to report decay fungi damage at the wood deck nook on the March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(4).

s. Respondent failed to report the full extent of the substandard repair work previously completed at the wood deck on the March 19, 2010, inspection report.

t. Respondent failed to report substandard repair work previously completed at the wood deck on the February 17, 2010, inspection report.

Section 8516(b)(6) and (7) and (10):

u. Respondent failed to make a proper finding and recommendation regarding the reported fungus damage at the porch post on the July 23, 2009, inspection report; and at the deck/patio on the February 17, 2010, inspection report. The findings failed to report the cause of the infection, and the recommendations failed to include a recommendation to correct the excessive moisture condition that caused the infection, as defined by California Code of Regulations, title 16, section 1991(a)(5).

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v. Respondent failed to make a proper finding and recommendation regarding the reported fungus damage at the wood deck storage area on the March 19, 2010, inspection report. The findings failed to report the cause of the infection, and the recommendation failed to include a recommendation to correct the excessive moisture condition that caused the infection, as defined by California Code of Regulations, title 16, section 1991(a)(5).

Section 8516(b)(10):

w. Respondent failed to make a proper recommendation regarding the reported evidence of subterranean termites in the substructure on the July 23, 2009, and February 17, 2010, inspection reports. The recommendations failed to include a recommendation to remove the accessible evidence of infestation, as defined by California Code of Regulations, title 16, section 1991(a)(9).

x. Respondent failed to make a recommendation for the water stains reported in the substructure, the evidence of drywood termites reported at the decks/patios, and the water stains reported at the decks/patios on the February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(g).

y. Respondent failed to make a proper recommendation regarding the water stains in the substructure reported on the February 17, 2010, and March 19, 2010, inspection reports. A recommendation was not made to have the proper tradesmen determine the source of the water stains, and to make repairs if needed, as defined by California Code of Regulations, title 16, section 1990(b)(5).

z. Respondent failed to make a proper recommendation regarding the inaccessible portion of the substructure, reported on the March 19, 2010, inspection report. The recommendation failed to include a recommendation for further inspection of the inaccessible substructure, and the issuance of a "supplemental" inspection report, as defined by California Code of Regulations, title 16, section 1993(d).

aa. Respondent failed to make a proper recommendation regarding the reported evidence of drywood termites at the decks/patios on the March 19, 2010, inspection report. The

recommendation failed to include a recommendation to cover or remove the accessible evidence of infestation, as defined by California Code of Regulations, title 16, section 1991(a)(8).

bb. Respondent failed to make a proper recommendation regarding the drywood termite damage at the decks/patios reported on the March 19, 2010, inspection report. A recommendation was made to just patch the damage, when the damage needs to be replaced, as defined by California Code of Regulations, title 16, section 1991(a)(5).

THIRD CAUSE FOR DISCIPLINE

(Workmanship)

36. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that on the Lieber property, he failed to complete all work to meet accepted trade standards for good and workmanlike construction in any material respect, as defined by California Code of Regulations, title 16, section 1937.14, in the following respects:

Inspection Report No. 5527, dated July 23, 2009:

a. Respondent failed to properly repair the fungus damage at the side porch post, in that instead of replacing the entire board, only a section was cut out and replaced, and the replaced section was loose.

b. Respondent failed to properly repair the damage at the wood deck framing, in that the replacements are not properly cut, nailed, or installed; some of the replacements are split; some of the damage was sloppily patched, when it should have been replaced; some of the damage was sloppily patched and not sanded; and the downspout was not properly installed.

Inspection Report No. 5527A, dated February 17, 2010:

c. Respondent failed to properly repair the reinforcements at the subterranean termite damage in the substructure, in that a cleat was not used to support the reinforcements; the reinforcements were either toe-nailed into the floor joist, or nailed through the floor joist into the reinforcements.

d. Respondent failed to properly repair the decay fungi damage and excessive moisture condition (water stains) at the framing below the side carriage porch, in that scrap lumber was

randomly installed under the porch, serving little or no purpose at all, and the boards that appeared to have a purpose were not properly nailed.

e. Respondent failed to properly repair the damage at the earth-to-wood contact at the wood deck load posts, in that instead of leveling the soil beneath the wood deck, a stretch was created around the load posts, which has already started to allow the earth to re-accumulate against the wood in the trenches.

f. Respondent failed to properly repair the decay fungi damage at the framing of the nook below the wood deck, in that it is not properly installed or nailed.

g. Respondent failed to properly repair the decay fungi damage at the framing of the storage area below the wood deck, in that the repair work is not properly installed.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Contract)

37. Respondent's registration and operator's license are subject to discipline under Code section 8638, in that, concerning the Lieber property, Respondent failed to complete the following work, as set forth in the Completion Notice dated February 19, 2010:

a. Respondent failed to remove the cellulose debris in the substructure.

b. Respondent failed to repair the subterranean termite damage in the substructure.

c. Respondent failed to remove the evidence of subterranean termites in the attic.

d. Respondent failed to repair the drywood termite damage at the wood deck framing.

FIFTH CAUSE FOR DISCIPLINE

(Failed to Comply with Report of Findings)

38. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that he failed to comply with Code section 8622, by failing to correct the items described in the Report of Findings within thirty (30) calendar days of receipt of the Notice, bringing the Lieber property into compliance with the Board's Notice and Report of Findings, dated January 5, 2010.

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SIXTH CAUSE FOR DISCIPLINE

(Aiding and Abetting)

39. Respondent's registration and operator's license are subject to discipline under Code section 8639, in that on or about March 19, 2010, on the Lieber property, Respondent aided or abetted an unlicensed individual or knowingly combined or conspired with an unlicensed individual, Ruben Salas, to evade the provisions of the Structural Pest Control Act, in that Ruben Salas performed an inspection of the attic space over the garage.

SEVENTH CAUSE FOR DISCIPLINE

(Grossly Negligent or Fraud Act)

40. Respondent's registration and operator's license are subject to discipline under Code section 8642, in that, on or about July 23, 2009, concerning the Lieber property, Respondent committed a grossly negligent or fraudulent act by failing to indicate on Inspection Report No. 5527, what type of report he was issuing.

PRIOR DISCIPLINE/MATTERS IN AGGRAVATION

41. In a Decision and Order effective December 3, 2008, *In the Matter of the Accusation Against Zappen Exterminating; Joseph W. Zappen,* Case No. 2008-14, Respondent's Company Registration Certificate No. PR 3982 and Operator's License No. OPR 10234, in Branch 3, were revoked. The revocations were stayed and Respondent was placed on three (3) years probation under certain terms and conditions. In addition, Respondent was suspended from practicing for ten (10) business days. A true and correct copy of the Decision and Order, Stipulated Settlement and Disciplinary Order, and Accusation in Case No. 2008-14, are attached hereto as **Exhibit A**, and incorporated herein by reference as though fully set forth.

42. In a Decision and Order effective June 25, 2010, *In the Matter of the Accusation Against Zappen Exterminating; Joseph W. Zappen,* Case No. 2009-37, Respondent's Company Registration Certificate No. PR 3982 and Operator's License No. OPR 10234, in Branch 3, were revoked. The revocations were stayed and Respondent was placed on an additional two (2) years probation beyond the three (3) year term of probation set forth in the Decision and Order in Accusation No. 2008-14, which was to expire on December 30, 2011. A true and correct copy of

the Decision and Order, Stipulated Settlement and Disciplinary Order, and Accusation in Case No. 2009-37, are attached hereto as **Exhibit B**, and incorporated herein by reference as though fully set forth.

Company Registration No. PR 3982

43. On or about November 29, 2005, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

44. On or about July 2, 2008, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

45. On or about December 14, 2009, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

Operator License No. OPR 10234

46. On or about December 14, 2009, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

OTHER MATTERS

47. Notice is hereby given that section 8620 of the Code provides, in pertinent part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

48. Pursuant to Code section 8624, if Operator's License No. OPR 10234, issued to Joseph W. Zappen, is suspended or revoked, the Board may suspend or revoke Company Registration No. PR 3982, issued to Zappen Exterminating.

49. Pursuant to Code section 8624, the causes for discipline established as to Zappen Exterminating, likewise constitutes causes for discipline against Joseph W. Zappen, regardless of

whether he had knowledge of or participated in the acts or omissions which constitute causes for discipline against Zappen Exterminating.

50. Pursuant to Code section 8654, if discipline is imposed on Operator's License No. OPR 10234, issued to Joseph W. Zappen, then Joseph W. Zappen shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Joseph W. Zappen, shall be subject to disciplinary action.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 3982, issued to Zappen Exterminating;

2. Revoking or suspending Operator's License Number OPR 10234, issued to Joseph W. Zappen;

3. Revoking or suspending any other license for which Joseph W. Zappen is furnishing the qualifying experience or appearance;

4. Ordering restitution of all damages according to proof suffered by Elaine Lieber as a condition of probation in the event probation is ordered;

5. Prohibiting Joseph W. Zappen from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 3982, issued to Zappen Exterminating;

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6. Ordering Joseph W. Zappen to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

7. Taking such other and further action as deemed necessary and proper.

DATED: 10/11/10

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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